

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: September 22, 2004

Case Number: TSO-0159

This decision concerns the eligibility of XXXXXXXXXXXX (the individual) to maintain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The Department of Energy (DOE) local security office suspended the individual's access authorization under the provisions of Part 710. This decision considers whether the individual's access authorization should be restored. For the reasons stated below, the individual's access authorization should not be restored at this time.

**I. BACKGROUND**

The present case concerns an individual whom a DOE consultant psychiatrist (the DOE psychiatrist) has diagnosed with Alcohol Abuse and as a user of alcohol habitually to excess. At the hearing, the individual challenged the DOE psychiatrist's diagnosis as based on factually incorrect statements and contended that the records of his treating physician and counselor supported his position. In light of the evidence presented in this proceeding, I have reached the conclusion that the DOE's security concerns regarding this individual have not been mitigated and his access authorization should not be restored.

The events leading to this proceeding began when the local DOE security office received information indicating that the individual had been charged with domestic violence in April 2003. On September 4, 2003, a representative of the local security office conducted a personnel security interview (PSI) of the Individual. A transcript of this PSI appears in the record of this proceeding as DOE Exhibit (Ex.) 8. During that PSI the individual stated that he generally drinks two to three six-packs of beer per week, and has been doing so for the past 15 years. PSI at 35-37. He also acknowledged that he has had disputes with his wife, and is "less passive" in those disputes after he has consumed a few beers. *Id.* at 43, 64. The individual was then asked to submit to an examination by the DOE psychiatrist. On December 19, 2003, the DOE psychiatrist conducted a forensic psychiatric examination of the individual. On December 31,

2003, the DOE psychiatrist issued a report in which he stated that the Individual met the criteria for Substance Abuse, Alcohol, without adequate evidence of rehabilitation or reformation, based on the diagnostic criteria set forth in the *Diagnostic and Statistical Manual of the American Psychiatric Association, Fourth Edition, Text Revision (DSM-IV TR)*. According to the DOE psychiatrist, this is a mental condition that causes or may cause a significant defect in the individual's judgment and reliability. In his report, the DOE psychiatrist further determined that the individual is also a user of alcohol habitually to excess. DOE Ex. 3 at 33-35.

After receiving the DOE psychiatrist's report, the local security office initiated an administrative review proceeding. See 10 C.F.R. § 710.9. The local security office then issued a letter notifying the individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). DOE Ex. 1. The Notification Letter alleges that the individual has "been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as . . . suffering from alcohol abuse." 10 C.F.R. § 710.8(j) (Criterion J). In addition, the Notification Letter alleges that the individual "has an illness or mental condition which in the opinion of a psychiatrist causes, or may cause, a significant defect in . . . judgment or reliability." 10 C.F.R. § 710.8(h) (Criterion H).

The individual filed a request for a hearing in which he responded to the specific allegations contained in the Notification Letter. DOE Ex. 2. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as Hearing Officer.

At the hearing, the local security office presented one witness, the DOE psychiatrist. The individual presented two witnesses, who are both friends and co-workers of the individual. The individual also testified on his own behalf.

## II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. See 10 C.F.R. § 710.27(a). The regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Any doubt as to an individual's eligibility shall be resolved in favor of the national security." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. See 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

### III. FINDINGS OF FACT

In most proceedings under Part 710, the facts are generally not in dispute. In this case, however, the focus of the individual's argument in favor of restoring his access authorization is that the facts on which the DOE psychiatrist based his diagnosis are incorrect. As a result, he argues, the diagnosis itself is incorrect, and the DOE's concerns arising from that diagnosis are without merit.

The following general facts are not disputed. The individual has held a position that requires an access authorization for many years. He has consumed alcohol, mainly beer, for many years as well, and continues to do so. Although poor liver function can be associated with drinking alcohol to excess, his liver function was tested at the request of the DOE psychiatrist and was found to be within normal limits. On the other hand, the results of another laboratory test the DOE psychiatrist ordered, a carbohydrate deficient transferin (CDT) ultraquant, indicated a 75% to 85% probability that the individual had consumed at least 60 grams of alcohol, the equivalent of four or five drinks, on each of the seven days preceding the test. DOE Ex. 3 at 30. On April 26, 2003, he and his wife (now ex-wife) argued and came into physical contact with each other. The following morning, his wife filed a police report, which led to the issuance of a temporary restraining order against him. The couple then separated, and their divorce became final in December 2003. The individual has not entered into any form of treatment concerning his use of alcohol, as he does not believe he suffers from alcohol abuse or drinks to excess.

### IV. ANALYSIS

#### A. Derogatory Information and Associated Security Concerns

During the PSI, the individual told the local security office that he usually drinks "two to three [beers], sometimes one or two and some days none," at home after work, four to five days a week. PSI at 39. Elsewhere in the PSI, he stated he was consuming, on average, two to three six-packs of beer each week. *Id.* at 35. These two quantifications are not necessarily inconsistent: three beers five days a week is 15 beers, or two-and-a-half six-packs. He also stated at the PSI that he preferred "premium beers and I don't drink that much 'cause it's too expensive." *Id.* at 62. During his interview with the DOE psychiatrist, however, he was asked to recount the number of beers he had consumed in the past week, by day. The DOE psychiatrist reported his response as follows:

Friday [the day before the interview] = 0;  
Thursday = 3 or 4 Bud regular;  
Wednesday = 3 or 4 or 6 Bud regular;  
Tuesday = 3 or 4 or 6 Bud regular;  
Monday = 3 or 4 or 6 Bud regular;  
Sunday = 7 or 8 regular beers;  
Saturday = 4 or 5 or less regular beers.

DOE Ex. 3 at 23. Later in the same interview, the individual reported that he was seeing a psychologist regarding family stresses, not regarding his alcohol consumption, and the psychologist was “coaching” him to control his drinking. *Id.* at 25.

The DOE’s Exhibit 10 contains a Petition for Order of Protection from Domestic Abuse that the individual’s wife at the time filed the morning after the incident. In a narrative portion of that petition, the ex-wife states that the individual had been drinking before he pushed her down and then punched and beat her. She also stated that such incidents had happened “through the extent of our marriage of 17 years,” and they were caused by his “drinking in the evenings.” On the basis of that petition, a Temporary Order of Protection was granted, which appears as part of Exhibit 10. The Petition and the Temporary Order of Protection formed a portion of the file that the DOE psychiatrist reviewed and considered in his preparation of his evaluative report of the individual.

In his report, the DOE psychiatrist diagnosed the individual with alcohol abuse based upon diagnostic criteria set forth in the *DSM-IV TR*. DOE Ex. 3 at 33. The *DSM-IV TR* provides that a diagnosis of alcohol abuse is supported when the individual manifests one of four behaviors within a twelve-month period: (1) recurrent failure to fulfill major role obligations at work, school or home, (2) recurrent use in situations in which it is physically hazardous, (3) recurrent substance-related legal problems, and (4) continued use despite social or interpersonal problems. *Id.* at 32. In the case of the individual, the DOE psychiatrist determined that the individual met the fourth criterion based on statements the ex-wife wrote in her Petition for Order of Protection, *id.* at 4 n.3 (physical arguments arising from the individual’s drinking), statements the individual made during the PSI, *id.* at 12 n.17 (less tolerant of wife’s actions after drinking), *id.* at 13 n.19 (alcohol issue arose during marital counseling in the late 1980s), and statements an unnamed source made during a background investigation, *id.* at 18 n.32 (individual’s drinking led to verbal and physical abuse and ultimately to marital separation three times).

The DOE psychiatrist also determined in his report that during 2003 the individual used alcohol habitually to excess. *Id.* at 33. He reached this conclusion on the basis of statements the individual made to him during their interview: that at the time of the interview, he was drinking a six-pack or more within an hour or hour-and-a-half period “a couple of times a week,” and had drunk 12 beers within a 24-hour period two or three times in the past year. *Id.* at 24 & nn. 47, 48, 50; *see also id.* at 27 (seven to nine beers within an hour or hour-and-a-half about once a week).

On the basis of the record, I find that the local security office properly invoked Criteria H and J in suspending the individual’s access authorization. The DOE psychiatrist’s diagnosis of alcohol abuse is supported by reported evidence of the domestic violence incident. His opinion that the individual uses alcohol habitually to excess is corroborated by both the result of the CDT test and the individual’s own accounting of his alcohol consumption. In other DOE access authorization proceedings, hearing officers have consistently found that a diagnosis related to excessive alcohol use raises important security concerns. *See, e.g., Personnel Security Hearing, Case No.*

TSO-0168, 29 DOE § 82,807 (2005) (and cases cited therein). In these cases it was recognized that the excessive use of alcohol might impair an individual's judgment and reliability, and his ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. Accordingly, I will turn to whether the individual has presented sufficient evidence to mitigate the security concerns at issue here.

## B. Mitigating Evidence

The gist of the individual's argument in this proceeding is that there is no alcohol issue from which mitigation in the form of rehabilitation or reformation is necessary. Rather, he has challenged the accuracy of the derogatory information upon which the local security office relied when it suspended his access authorization. If the individual were to successfully establish that the facts underlying the DOE's security concerns are false, then those concerns would be mitigated. As set forth below, I find that the individual has not established the truth of his version of the facts, and therefore, he has not mitigated the DOE's security concerns in this manner.

The individual's current and historical consumption of alcohol is one area in which the individual feels the record contains inaccurate and exaggerated information. At the hearing, the individual formally recanted any information he provided at the psychiatric evaluation regarding his alcohol consumption. He felt that the DOE psychiatrist's interviewing technique had thrown him "off guard" and confused him, and the result was that he "way overstated things." Tr. at 49-50. The individual also described his current drinking pattern at the time of the hearing as "drinking lite beer with less alcohol, and less of it in general." *Id.* at 54-55 (estimating a 50% reduction in alcohol consumption). Upon further questioning, he explained that his new pattern still involves the consumption of two to three beers, including one dark regular beer, on those days that he drinks beer. *Id.* at 56.

The DOE psychiatrist's testimony at the hearing provided evidence that the amount of alcohol the individual told him he was consuming was not overstated. First of all, the DOE psychiatrist stated that he has interviewed more than a thousand people in the same manner, and no one had ever overstated their consumption before: "If anything, people usually minimize what they say they drink." Tr. at 80-81. Moreover, the amount of alcohol consumption the individual reported to the DOE psychiatrist was consistent with the result of the CDT test performed on the individual, which was by far the highest the psychiatrist had ever seen in an access authorization case. *Id.* at 81 (normal is less than 2.5%; 2.6-2.7% is significant evidence of excess alcohol consumption; the individual's result was 4.8%). Finally, the DOE psychiatrist stated that the individual demonstrated non-verbal behaviors, including "masking" his face (i.e., placing his hands in front of his face) while answering questions, that have been correlated to lack of honesty in such interview situations. *Id.* at 82-83.

Based on the entire record in this proceeding, I find that the individual is still consuming alcohol in amounts that reasonably raise national security concerns. Although he states that he has "cut back 50% in alcohol consumption" since the time of the PSI, Tr. at 56, his own testimony

demonstrates that he still drinks between two and three beers on an average night. Although at the time of the PSI, the individual reported that he was drinking only premium beer, the cost of which limited his consumption, by the time of the hearing he was mixing premium beer with less expensive beer. This more recent drinking formula does not reflect a successful self-imposed method for cutting back on alcohol consumption. During the hearing he also reported that his sister, a nurse, advised him to maintain daily alcohol consumption of two beers to help stave off the heart disease that runs in their family. *Id.* at 24. There is no evidence in the record that beer consumption has the salutary effect his sister claims, nor that his sister made the statement to him. In any event, it is difficult for me to accept that he continues drinking beer solely for medical purposes. Even if I accept his recanting of the consumption figures he gave the DOE psychiatrist during the evaluation, the remaining testimony indicates that he consumes alcohol regularly in amounts that I am unable to quantify because of the inconsistency of his statements in that regard. It does, however, appear to me that he minimizes the amount of alcohol he consumes. For example, in describing his drinking habits at the time of the hearing, he first stated that he had “cut back 50% in alcohol consumption from [the time of his PSI.]” *Tr.* at 55. Upon further questioning, however, he revealed that he still drank the same amount of beer, but believed that the alcohol content of lite beer was “a lot less.” He admitted, though, that he was “just sort of winging on this.” *Id.* at 56. His relaxed attitude regarding cutting back on his alcohol consumption comports with his overall position that he does not believe that he has an alcohol problem. *Id.* at 22. In addition, the result of the CDT test, while only 75-80% significant, tends to support a conclusion that the individual is consuming more alcohol than he is reporting. In sum, the individual has not convinced me that the DOE psychiatrist is incorrect in his professional evaluation that the individual drinks habitually to excess and suffers from alcohol abuse.

The record in this proceeding also presents two conflicting sets of facts regarding what happened on April 26, 2003. At the PSI, the individual contended that many of the facts his ex-wife related in her Petition for Order of Protection were fabricated. The individual stated his belief that his ex-wife suffers from bipolar disorder, which causes her to become extremely upset and frustrated, and leads her to lash out at him. PSI at 7. He also stated that she refused to speak with a mental health professional, so the illness has not been diagnosed or treated. *Id.* at 10, 26, 27. He reported that he had decided his ex-wife was bipolar from asking “knowledgeable people” to whom he had described his ex-wife’s symptoms. *Id.* at 11. He told the personnel security specialist that physical altercations had occurred three other times during their marriage, and in the past he would protect his face and let her hit him until she “[got] over it.” *Id.* at 7-8. On that evening, however, “when she started doing it I said, I’m not gonna let you do this again and I held her arms and she resisted and eventually . . . after telling her to stop it several times she relaxed and I let her go and she went downstairs.” *Id.* at 8. He maintained that the Petition she later filed with the police was accurate to the extent she stated that she had pushed him and caused him to trip and fall down, “but then the whole thing was completely distorted and embellished where she said I had punched her and done this and done that and everything else.” *Id.* at 9. He did state, however, that on the night of the domestic violence event, he had drunk four or five beers between 5 p.m. and 10 p.m., before the event occurred. *Id.* at 29. He also stated that, because of dental work, he had eaten very little that day, and he thought that “the four

or five beers may have [had] more of an effect because I was not eating very much, but I was not drunk.” *Id.*

The only significance of the April 26, 2003 domestic violence incident in this proceeding is whether it is further evidence of the individual’s alcohol problems that form the basis of the DOE’s security concerns. If the individual consumed alcohol in such quantities that his behavior that evening was influenced by the alcohol, then the domestic abuse incident would contribute to a finding that the individual’s access authorization should not be restored. Simply put, his ex-wife’s version of the events supports a finding that his alcohol consumption played a role in his behavior that evening; his version would argue that it did not. I find that his version, however, depends on a number of unsubstantiated premises, which I must accept as truth in order for his version to stand. As a starting point, I am asked to accept the fact that his ex-wife is bipolar on the basis of his report of one or more informal opinions made by “knowledgeable people” who had not examined her. In the absence of an opinion by a qualified medical expert, I am unable to accept this as fact. Another premise I am asked to accept as fact is that he was not under the influence of alcohol at the time of the incident. Although he maintains that he “was not drunk,” PSI at 29, he reported that he had had four or five beers earlier that evening and had eaten little that day. There is simply too little in the record to convince me that his opinion about his sobriety is correct. The individual has not established the truth of his version of the facts.

The individual argues that the DOE psychiatrist reached his unfavorable evaluation of the individual based on a misunderstanding of what transpired on April 26, 2003. *Id.* at 27. The DOE psychiatrist testified at the hearing, however, that he would have reached a similar conclusion regarding the individual’s alcohol consumption without any consideration of the April 26 event. The DOE psychiatrist explained that if the ex-wife’s statements in her Petition for Order of Protection were false regarding his drinking beer before the event, regarding his hitting her, and regarding the fact that these events had occurred with some regularity over the course of their marriage, he would not find that the individual met the criteria for alcohol abuse. Tr. at 87. However, his opinion that the individual used alcohol habitually to excess would still stand, he testified, because the evidence for that condition was “very strong” and was based almost entirely on the individual’s own statements. *Id.* Based on the entirety of the record before me, I agree with the DOE psychiatrist.

In the vast majority of access authorization proceedings in which alcohol use is at issue, the individual attempts to mitigate the DOE’s security concerns by establishing that he has been rehabilitated from, or has reformed, his behavior regarding alcohol consumption. In the present case, however, the individual maintains that he does not have an alcohol problem. Tr. at 22. Consequently, he has not abstained from alcohol nor has he engaged in any significant form of substance abuse therapy or counseling. He stated at the hearing that he has cut back his daily alcohol consumption, though the evidence is far from clear concerning the degree to which he has cut back. *See, e.g., id.* at 54-56. There is also evidence that he is seeing a mental health professional, but he maintains that the visits concern family matters, not substance abuse matters. *Id.* at 25.

In his report and at the hearing, the DOE psychiatrist stated his requirements for rehabilitation and reformation. As adequate evidence of rehabilitation, the DOE psychiatrist required that the individual be abstinent for two years, including either (a) 100 hours of active participation in Alcoholics Anonymous meetings over the course of one year, or (b) 50 hours of treatment in a professionally run alcohol treatment program over the course of six months. As adequate evidence of reformation, the DOE psychiatrist required two years of absolute sobriety if he participated in either form of treatment described above, or three years of absolute sobriety if he did not. Such evidence of rehabilitation or reformation would be inadequate if it were accompanied by any significant alcohol-related incidents or significant relapses into drinking, according to the psychiatrist's report. DOE Ex. 3 at 33-34. Because the individual has continued to drink beer, he clearly cannot establish mitigation of the DOE's security concerns under Criteria H and J by establishing adequate evidence of rehabilitation or reformation.

In light of the individual's current and historical consumption of alcohol, I have concluded that the individual has not demonstrated that his future alcohol consumption will not continue to present a security concern. Accordingly, I find that the individual has not successfully resolved the security concerns raised by his excessive alcohol use and diagnosis of alcohol abuse.

## **V. CONCLUSION**

For the reasons set forth above, I conclude that the individual has not resolved the security concerns raised under Criteria H and J. Therefore, the individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the individual's access authorization should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

William M. Schwartz  
Hearing Officer  
Office of Hearings and Appeals

Date: